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September 7, 2022

VIA IZIS

Zoning Commission
for the District of Columbia
441 4th Street, NW, Suite 210S
Washington, DC 20001

**Re: ZC Case No. 22-06 / 801 Maine Ave SW PJV, LLC
Party Status Request for Capitol Square Homeowner Association**

Dear Members of the Commission:

The Capitol Square Homeowners Association (the "HOA") has not provided the documentation required for a request for party status. Specifically, Subtitle Z § 404.1(f) requires:

- (1) Evidence that the entity requesting party status has authorized the entity's participation in the proceeding; and
- (2) Evidence that the entity requesting party status has designated a specific officer, employee, or agent to act on its behalf and bind entity in proceeding.

Because the HOA has not filed the required documentation, their request for party status cannot be granted by the Zoning Commission. Therefore, the Applicant does not need to formally oppose the HOA's request for party status.

Alternatively, in an abundance of caution, the Applicant requests a waiver of the time to challenge the request for party status. Specifically, we respectfully request that the Zoning Commission (the "Commission") exercise its authority under Subtitle Z § 101.9 to permit the Applicant extended time to challenge the request for party status in opposition to the above-referenced case, which is marked at Exhibit 22 in the record (the "Party Status Request").

Subtitle Z § 404.9 provides that an applicant's opposition to a party status request shall be filed within seven (7) days following the date of service. The Party Status Request was served upon the Applicant via email on August 25, 2022; therefore, the procedural deadline has

technically passed. However, for the reasons set forth below, there is good cause to grant the requested waiver, and doing so would not be prejudicial.

The Party Status Request was filed by Erin Berg on behalf of the Capital Square Homeowner Association (the "HOA") on August 25, 2021. The accompanying Form 140 indicates that Mr. Berg was authorized to file on behalf of the HOA pursuant to the HOA's bylaws. However, there is no provision in the bylaws that explicitly authorizes the president to bind all members of the HOA to a certain position absent a majority vote. Section 4.5 of the HOA's bylaws states, in relevant part that "[a]n affirmative vote of a majority of the votes present at which a quorum is in attendance in person or by proxies shall be necessary to transact business and to adopt decisions binding on all Members." (Emphasis added). The Party Status Request does not include documentation showing that an appropriate vote took place, or that a majority of the HOA's members adopted the position. Indeed, the Party Status Request only identifies 17 homeowners in support, which is insufficient given that the HOA is comprised of 93 members. Thus, there is no evidence that the Party Status Request truly reflects the HOA's position on the matter.

In addition to the tenuous nature of the Party Status Request, the grant of the requested waiver would not prejudice the rights of any party to this case. The HOA did not request advance consideration of its Party Status Request pursuant to Subtitle Z § 404.3. On the accompanying Form 140, the HOA requested that the Commission consider the matter on the scheduled public hearing date of October 6, 2022, which is a month from the date of this letter.

In light of the foregoing, we urge that the Commission find that the party request is deficient and, therefore, cannot be considered by the Zoning Commission. Alternatively, we respectfully request that the Commission exercise its authority pursuant to Subtitle Z § 101.9, and waive the timing under Subtitle Z § 404.9, and accept this opposition to the Party Status Request filed by the HOA.

Thank you for your considerate attention to this matter.

Very truly yours,

Holland & Knight LLP



Leila Jackson Batties


Christopher S. Cohen

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2022, a copy of the foregoing request regarding party status was served on the following via the means noted below:

- | | |
|---|-------------------|
| <p>1. Advisory Neighborhood Commission 6D
c/o Commissioner Edward Daniels, Chair
6D@anc.dc.gov
6D07@anc.dc.gov</p> | <p>VIA E-MAIL</p> |
| <p>2. Dr. Marjorie Lightman
Single-Member District Representative
ANC 6D-01
465 M Street, SW
Washington, DC 20024
6D01@anc.dc.gov</p> | <p>VIA E-MAIL</p> |
| <p>3. Erin Berg, President
Capitol Square Homeowners Association
ErinGBerg@gmail.com
<i>Party Status Request Pending</i></p> | <p>VIA EMAIL</p> |


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